

UNITED STATES DISTRICT COURT

DISTRICT OF NEW MEXICO

Clerk's Minutes

Before the Honorable James O. Browning

CASE NO. CIV 09-631 JB/CEG

DATE: August 30, 2010

TITLE: *West v. NM Tax. & Rev. Dept., et al.*

COURTROOM CLERK: K'Aun Wild

COURT REPORTER: Danna Everett

COURT IN SESSION: 9:07 a.m.
10:47 a.m.

COURT IN RECESS: 10:31 a.m. = 1:24
12:00 p.m. = 1:13
TOTAL = 2:37

TYPE OF PROCEEDING: Motion Hearing (see below)

COURT'S RULINGS/DISPOSITION:

1. Defendants' Motion to Strike Plaintiff's Motion for Summary Judgment [64] - **TO BE WITHDRAWN**
2. Motion to Accept Appendix as Timely Filed [91] - **GRANTED**
3. Motion to Substitute Signed Affidavit [92] - **GRANTED**
4. Motion for Summary Judgment [54] - **TAKEN UNDER ADVISEMENT**
5. Plaintiff's Motion for Summary Judgment [56] - **TAKEN UNDER ADVISEMENT**
6. Plaintiff's Amended Motion for Summary Judgment Amended Motion [sic] [87] - **TAKEN UNDER ADVISEMENT**
5. Plaintiff's Amended Motion for Summary Judgment and Supporting Memorandum Appendix [90] - **TAKEN UNDER ADVISEMENT**

ORDER CONSISTENT WITH COURT'S RULING TO BE PREPARED BY: Court

ATTORNEYS PRESENT FOR PLAINTIFF(S): ATTORNEYS PRESENT FOR DEFENDANT(S):

Paul Gayle-Smith

Paula Maynes

PROCEEDINGS:

Court in Session: 9:07 a.m.

Court: Calls case. Counsel enter appearances.

Court: Discloses knowledge of/relationship with Holman business and Rick Holman, as well as Paul Baca and Betty Lanphere.

DEFENDANTS' MOTION TO STRIKE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [64]

Court: Understands from CRD Defendant's motion to strike will be withdrawn?

Ms. Maynes: Correct.

Court: Requests written notice re: same.

Ms. Maynes: Will provide.

MOTION TO ACCEPT APPENDIX AS TIMELY FILED [91] & MOTION TO SUBSTITUTE SIGNED AFFIDAVIT [92]

Court: Further understands from CRD that motion to accept appendix as timely and motion to substitute signed affidavit are unopposed?

Ms. Maynes: Correct.

Court: Grants.

MOTION FOR SUMMARY JUDGMENT [54]
&
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [56]
&
PLAINTIFF'S AMENDED MOTION FOR SUMMARY JUDGMENT AMENDED MOTION [SIC] [87]
&
PLAINTIFF'S AMENDED MOTION FOR SUMMARY JUDGMENT AND SUPPORTING MEMORANDUM APPENDIX [90]

Court: Suggests MSJ's can be argued together, as appear to be cross-motions.

9:11 a.m. Ms. Maynes: Indicates that approach is acceptable and argues in support of Defendants' motion. Reminds Court that the negligent supervision claim has been withdrawn.

9:44 a.m. Mr. Gayle-Smith: Argues in opposition to Defendants' motion and in support of Plaintiff's motions. Submits Defendants did not move for SJ on hostile work environment claim.

Court in recess: 10:31 a.m.

Court in session: 10:47 a.m.

Mr. Gayle-Smith: Continues arguing in opposition to Defendant's motion and in support of Plaintiff's motions.

11:19 a.m. Ms. Maynes: Argues in reply in further support of Defendants' motion and in opposition to Plaintiff's motions.

11:36 a.m. Mr. Gayle-Smith: Argues in reply in further support of Plaintiff's motions. Asks if need to submit additional briefing on hostile work environment claim?

Court: If have something further to say on the issue and parties cannot agree on how to go

about doing that should call CRD for Court to work out.

Mr. Gayle-Smith: Will wait to hear from Court as to whether is needed.

Court: Will work to get decision out by 9/24, which is deadline for Plaintiff to provide PTO to Defendants. Anything further?

Counsel indicate there is nothing.

Court in recess: 12:00 p.m.